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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 70-9-L (R-95)

REQUESTED BY: T. G. HAWKINS
Commissioner
Department of Finance

QUESTION: Are members of the Legislature exempt from the requirements of A.R.S. § 38-623.B, which requires the authorization of the Governor for the use of private conveyances without the State, and the requirements of A.R.S. § 38-627, which requires the authorization of the Governor for the use of state equipment outside of the State, on the basis of the exception in A.R.S. § 38-626.B.2, which permits members of the Legislature, officers and employees of the Legislature, etc., to travel out-of-state without having their travel orders countersigned by the Governor?

ANSWER: No.

A.R.S. § 38-626 provides as follows:

§ 38-626. Travel without the state; approval; exemptions

A. When the official duties or activities of a public officer, deputy or employee of the state or of any department, institution, commission, board or other agency of the state necessitate traveling without the state, the travel order shall be countersigned by the governor or the governor may delegate the authority to countersign out of state travel orders to the commissioner of finance, and shall be authority to pay such claims from any funds available for such travel.

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B. The requirements of subsection A of this section shall not apply under the following:

1. When by the shortest practical routing, travel through an adjoining state is necessary to reach remote areas of this state. Per diem subsistence allowance shall be at the rates provided for travel within the state.

2. When any legislative member, officers and employees of the legislature, the legislative council, joint legislative budget committee members and employees, and other legislative interim committee members are traveling on official business.

3. When any public officer, deputy or employee travels on official business into states of the United States adjoining this state, provided that such out-of-state travel shall be performed entirely within an area not to exceed at any point, one hundred miles from the Arizona border. Per diem subsistence allowance for such travel shall be at the rates provided for travel within the state.

Although A.R.S. § 38-626.A requires that travel orders for out-of-state travel be countersigned by the Governor, A.R.S. § 38-626.B.2 specifically exempts members of the Legislature, etc., from the requirements of subsection A.

A.R.S. § 38-623 provides as follows:

§ 38-623. Means of travel, rates

A. First class travel by air, railroad or bus is permitted. Railroad sleeping accommodations shall be considered as transportation, and the cost thereof may be allowed each person traveling. Private conveyance may be allowed for travel within and without the state by way of the most direct

regularly traveled route computed by highway map or speedometer reading when traveling by automobile, and shall be paid at a rate not to exceed ten cents per mile, or if by airplane, by the most direct air mileage route listed by the civil aeronautics board at rates not to exceed fifteen cents a mile except that travel by rented or chartered automobile or airplane shall be paid at the cost thereof.

B. When private conveyance is used without the state, no transportation expense shall be allowed as provided for in paragraph A of this section, unless authorized in writing by the governor, or the commissioner of finance if such authority is so delegated by the governor, or unless otherwise provided by law.

C. When one or more officers, employees or other public agents traveling on official business are transported in the same private conveyance, one mileage only may be allowed.

A.R.S. § 38-623.B provides that when a private conveyance is used without the state, transportation expenses shall not be allowed unless use of such private conveyance is authorized in writing by the Governor. In the absence of a specific statutory exception comparable to A.R.S. § 38-626.B.2, it is our opinion that the Legislature did not intend to exempt themselves from the requirements of A.R.S. § 38-623.B.

A.R.S. § 38-627 provides as follows:

§ 38-627. Use of state equipment out of state

The governor, or the commissioner of finance if so authorized by the governor, may authorize the use of state equipment outside of this state when he ascertains in writing, that no other means


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of transportation is available or no service of the type required is provided by existing common carriers or the use of state equipment outside the state will best serve the interests of the state of Arizona.

A.R.S. § 38-627 requires that the Governor's authorization be obtained before state equipment may be used outside of this state. In the absence of a specific statutory exemption comparable to A.R.S. § 38-626.B.2, it is our opinion that the Legislature did not intend to exempt themselves from the requirements of A.R.S. § 38-627.

It is, therefore, our opinion that the exception provided for in A.R.S. § 38-626.B.2 does not exempt members of the Legislature from the provisions of A.R.S. § 38-623.B or A.R.S. § 38-627.

Respectfully submitted,



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The Attorney General

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